IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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ORDER

Banshi Lal Mathur

vs

State of Rajasthan & Anr.

S.B. CIVL WRIT PETIITON NO.5622/1993 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 23rd August, 2006

PRESENT

HON'BLE MR.MOHAMMAD RAFIQ,J.

Mr.Sanjay Mathur, Advocate, for the petitioners.
Mr.Rameshwar Dave, Dy. Government Advocate, for the respondents.

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BY THE COURT: -

This writ petition has been filed by Banshilal Mathur who entered in the services of the Government of Rajasthan having

been appointed as 'Ameen' in the Department of Settlement on 18th April, 1948. Having secured several promotions, he was finally promoted as Tehsildar w.e.f. 27th Dec., 1978. When he was posted as Tehsildar, Pachpadra, a memorandum purported to have been issued under Rule 17 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (in short CCA Rules) was served upon him. Charges against him were mainly to the effect that while working as Sub-Registrar, Office of the Registration (Stamp), he misused his office during the period from 21.1.1982 to 29.1.1982 and accepted number of documents having deficit stamp duties. The petitioner submitted reply to the aforesaid memorandum on 19th March, 1983. He later on was transferred from Pachpadra to some other place and heard nothing about the said disciplinary proceedings for quite some time. Suddenly however, he received a communication dated 22.5.1987 from the Collector, Barmer informing him that since the department has decided to initiate disciplinary proceedings against him under Rule 16 of the C.C.A. Rules, therefore, vide memorandum dated 8th March, 1983 proceedings were initiated under Rule 17 of the C.C.A. Rules would stand cancelled. He later on was served with the memorandum under Rule 16 of the C.C.A. Rules on 3.10.1987 requiring him to submit his reply within 15 days. The petitioner by his letter dated 17th Nov., 1987 requested the respondents (Board of

Revenue) to supply him certain documents. The respondents vide order dated 15th Dec. , 1987 and later on another order dated 5.1.1988 allowed him to inspect the documents. After inspection, the petitioner submitted detailed reply to the charge-sheet on 18.1.1988 wherein he denied the charges and requested the respondents to withdraw the proceedings under Rule 16 of the C.C.A. Rules. The Board of Revenue which was disciplinary authority of the petitioner appointed District Collector, Barmer as inquiring authority by order dated 29.2.1988. The Board of Revenue by its order dated 27th Sept., 1988 allowed Shri Ratanlal Goyal, Tehsildar, Raniwada, to act as defence assistant of the petitioner during the disciplinary proceedings. During the pendency of the disciplinary proceedings, the petitioner retired from services on attaining the age of superannuation on 30th April, 1989. After superannuation from service, he received a communication from the office of the Collector, Barmer to appear before him on 13th June, 1989 for further proceedings with regard to allegations levelled against him. The case of the petitioner is that he attended the disciplinary proceedings, but nothing was done by the inquiring authority on that day. On various dates thereafter, the petitioner appeared before the inquiring authority, but no material proceedings took place. The petitioner appeared before the inquiring authority on 17.1.1990 and on that date, the matter

was adjourned for 13.2.1990. On 13.2.1990, the petitioner could attend the proceedings as he was not feeling well and thereafter, the inquiring authority never called upon him for further proceedings. He however received a show cause notice dated 7th July, 1992 whereby he was directed to show cause that why 1/4th part of his pension be not stopped for five years under Rule 170 of the Rajasthan Service Rules. The petitioner also came to know from the said notice that the Collector, Barmer submitted his inquiry report to the Board of Revenue with the finding that the allegations no.1 and 2 are not proved against the petitioner and the allegation no.3 is partly proved. The Board of Revenue however remanded the matter to the Collector, Barmer to inquire the same afresh with regard to allegation no.2. The Collector, Barmer by fresh proceedings found the allegation no.2 also proved. In the subsequent inquiry report dated 10.10.1990 it was evident that PW-2 Dharulal was reexamined by the inquiring authority on 24.4.1990 and on the basis of the statement given by Shri Dharulal, the inquiring authority arrived at the conclusion that the petitioner is guilty of allegation no.2 also. The petitioner has alleged that the inquiring authority had relied upon certain documents, which were never produced by the Presenting Officer or by any other persons before the inquiring authority at least in the presence of the petitioner. The inquiry proceedings were therefore conducted in violation of the

principles of natural justice and the Rule 16 of the C.C.A. Rules. It was therefore prayed that the charge-sheet dated 3.10.1987 and the order of penalty dated 28th June, 1993 be quashed and set aside and the respondents may be directed to release petitioner's gratuity immediately with consequential benefits.

The respondents in contesting the writ petition have set up a case that although originally disciplinary proceedings were initiated against the petitioner under Rule 17 of the C.C.A. Rules, however, the respondents realized that conduct of the petitioner warranted major penalty, therefore, proceedings under Rule 17 of the C.C.A. Rules were withdrawn and fresh proceedings under Rule 16 of the C.C.A. Rules were initiated vide order dated 22.5.1987. In this order, it has categorically been stated that the memorandum dated 8.3.1983 issued under Rule 17 of the C.C.A. Rules was withdrawn and a separate disciplinary proceedings against the petitioner under Rule 16 of the C.C.A. Rules was being initiated. It cannot therefore be suggested that disciplinary proceedings were completely dropped. The inquiry was initiated at the time when the petitioner was in service of the respondents, there was nothing illegal in continuing such inquiry even after his retirement. The respondents have placed on record an application submitted by the petitioner on 13.6.1989 to prove that even after the remand of the matter to

the District Collector, Barmer for further inquiry, the petitioner was aware of the same and in this application, he demanded time for appearing before the departmental proceedings, therefore, it cannot be said that the inquiry proceedings conducted against him was without any notice. The petitioner having not appeared on first few dates appeared before the inquiring officer at his own on 17.1.1990 on which date, the matter was posted to 13.2.1990 and on which date, he was failed to appear. It would thus clear that he deliberately absented from inquiry proceedings. He therefore cannot be allowed to urge that he has not been heard and he was not associated with the inquiry. When the Collector, Barmer conducted further inquiry after remand, he gave notice to the petitioner and thus fresh evidence was recorded after due notice to the petitioner. It has been submitted that no reliance can be placed on the earlier report because that report was replaced by subsequent inquiry report dated 10.10.1990. The statement of PW-2 Dharulal was recorded by the inquiring officer after due notice to the petitioner. The respondents have denied the assertion of the petitioner that after remand from the Board of Revenue, the inquiring authority did not call upon by the petitioner to participate in the disciplinary proceedings. They have asserted that after remand of the matter, fresh notice was issued to the petitioner on 13.6.1989 requiring him to attend the

inquiry on 28.6.1989. The petitioner has attended the inquiry proceedings and in support of this fact, the respondents have placed on record his representation dated 28.6.1989. Once when the petitioner attended the inquiry proceedings, he was supposed to know the next date which was fixed in his presence. It has therefore been prayed that the writ petition may be dismissed.

I have heard Shri Sanjay Mathur learned counsel for the petitioner and Shri Rameshwar Dave, learned Dy. Government Advocate for the respondents and perused the record.

Shri Sanjay Mathur, learned counsel for the petitioner has argued that inquiry proceedings against the petitioner could be kept alive even after his retirement under Rule 170 of the Rajasthan Service Rules, 1951 only if any pecuniary loss was shown to have been caused to the Government whereas there was none in the present matter. The disciplinary proceedings were conducted in violation of the principles of natural justice and reasonable opportunity was not provided to the petitioner. The inquiry officer, i.e., the Collector, Barmer was biased against the petitioner because he himself was disciplinary authoirty under Rule 17 of the C.C.A. Rules against the petitioner. Lists of witnesses and documents as required by Rule 16(6) (a) of the

C.C.A. Rules were not supplied to the petitioner by the Presenting Officer nor the petitioner was allowed to submit such lists of defence witnesses and documents. The prosecution witness PW-1 Sumer Singh and PW-2 Dharulal were called as witnesses even without informing the petitioner. The inquiring authority did not serve any notice on the petitioner after remand from the Board for holding further inquiry. The statement of PW-2 Dharulal was recorded in absence of the petitioner inasmuch as the petitioner was not permitted to cross-examine them. It has been further argued that when the R.P.S.C. was consulted as required by Sub-rule (10) of Rule 16 of the C.C.A. Rules and commission advised the Government to reconsider the issue as the allegation against the petitioner were not proved but in spite of this, the disciplinary authority/State Government ignored the advised tendered by the Commission and no reasons have been given for not accepting the advise of the Commission. As per requirement of sub-rule (12) of Rule 16 of the C.C.A. Rules, the disciplinary authority was required to supply such reasons to the petitioner. The order passed by the disciplinary authority was non-speaking and non-reasoned order. It has not given any finding on each and every charge after considering the evidence objectively. He therefore prayed that the order of penalty deserves to be set aside.

On the other hand, Shri Rameshwar Dave, Dy.

Government Advocate argued that there was no illegality in appointing the District Collector, Barmer as inquiring officer by the Board of Revenue and according to the learned Dy. Government Advocate this does not prejudice to the petitioner because according to the rule 16 of the C.C.A. Rules, the disciplinary authority himself can hold the inquiry. Mere fact that the Collector, Barmer had earlier issued memorandum to the petitioner under Rule 17 of the C.C.A. Rules did not disqualify him to act as inquiring officer under Rule 16 of the C.C.A. Rules. He argued that the withdrawal of the memorandum under Rule 17 of the C.C.A. Rules did not close the matter because the disciplinary authority vide order dated 10.10.1990 simultaneously also initiated proceedings under Rule 16 of the C.C.A. Rules. It has been argued that lists of witnesses and documents are not required to be furnished alongwith the charge-sheet. Such lists are required to be produced when it is decided to hold inquiry. No prejudice was caused to the petitioner even if such lists were not supplied to the petitioner at the time of service of charge-sheet. It has been argued that even after the matter was remanded by the Board to the inquiring officer for further inquiry, the petitioner had appeared before the inquiring officer on 17.1.1990 and in his presence, 13.2.1990 was fixed as the next date. Non-appearance of the petitioner therefore clearly shows that he deliberately absented.

He therefore cannot be allowed to complain about the violation of principles of natural justice. So far as allegation of bias is concerned, learned Dy. Government Advocate submitted that bias cannot be accepted in the absence of any malafides against the inquiring officer and without his impleadment as party-respondent in the present writ petition. The inquiring officer after remand of the matter, recorded statement of PW-2 Dharulal after due notice to the petitioner. If he did not avail the opportunity to cross-examine him, he should blame himself. On the question of consultation with R.P.S.C., it has been submitted that the advise tendered by the Commission was duly considered by the disciplinary authority and reasons have categorically been mentioned in Annex.13, which is the impugned order itself. The order of penalty is fairly speaking and detailed one and principles of natural justice have not been violated and provisions contained in Rule 16 of the C.C.A. Rules were followed in their letter and spirit. He therefore argued that the writ petition may be dismissed.

I have considered the arguments of learned counsel for the parties and perused the record. So far as arguments of the petitioner that the withdrawal of notice under Rule 17 of the C.C.A. Rules by order dated 22.5.1987 should be taken as closure of disciplinary proceedings so far as charges contained

therein are concerned, this argument is liable to be rejected at the oust set because the said order dated 22.5.1987 categorically stated that the notice under Rule 17 of C.C.A. Rules has been withdrawn because regular disciplinary proceedings under Rule 16 of the C.C.A. Rules against the petitioner are being initiated. So also, the argument of bias against the Collector cannot be accepted just because he being disciplinary authority competent to initiate proceedings under Rule 17 issued such notice. In such circumstances, he is not disqualified from being appointed as inquiring officer by the disciplinary authority, namely, Board of Revenue in relation to the same charges if eventually it is decided to hold an inquiry under Rule 16 of the C.C.A. Rules on the same charges. The logic of such an argument does not does not stand scrutiny even from the scheme of Rule 16 because Rule 16 (6) itself provides that the disciplinary authority can himself act as an inquiring authority and, therefore, mere fact that Collector at one point of time had issued notice under Rule 17, which was later withdrawn by him could not prove any bias on his part against the petitioner. This argument in my view has no substance, therefore, merits rejection.

When the inquiring officer submitted his earlier report, the disciplinary authority (Board of Revenue) in exercise of its power

under Sub-rule (9) of Rule 16 decided to remand the matter to the disciplinary authority for further inquiry. The inquiring officer thereupon served notice on the petitioner. In response to such notice, the petitioner appeared before the inquiring oficer on 17.1.1990 and on that date next date was fixed as 13.2.1990 for further proceedings. This fact was not denied even by the petitioner when he stated in para no.17 of the writ petition that in the proceedings held by the inquiring authority on 17.1.1990, the matter was adjourned to 13.2.1990. He has not given any logical explanation as to why he has not appeared in the proceedings on 13.2.1990 except by stating that he was not feeling well. He has not stated as to if he has made an application either to the disciplinary authority or to the inquiring officer to adjourn the matter enabling to him to appear on the next date of hearing. He has even not produced any such medical certificate and has not even specified the aliment with which he was allegedly suffering on that date, which could be necessary to test the bonafides of the reason of his absence. No such application/medical certificate or reason has been produced before this Court. It has therefore to be deduced from it that the petitioner was fully aware of the date 13.2.1990 which was date fixed for inquiry proceedings, but he failed to avail of the opportunity to appear before the inquiring officer. He cannot therefore be allowed to complain about recording of the

statement of witnesses, namely, PW-2 Dharulal in his absence because that choice was made by none other than the petitioner himself. The respondents have rightly come out with the plea that the statement of Shri Dharulal was recorded after due notice to the petitioner. It was open to the petitioner to cross-examine Shri Dharulal but he failed to avail of the opportunity. In the circumstances, it cannot be accepted that there was any violation of principles of natural justice. On the question of consultation with R.P.S.C. it would be evident that the disciplinary authority in the impugned order of penalty has taken into consideration the advise tendered by the R.P.S.C.. The R.P.S.C. in their letter dated 30.10.`1992 advised the disciplinary authority that the charges against the petitioner were not proved "undisputedly" and, therefore, advise for reconsideration was given. The disciplinary authority in considering such advise of the Commission, recorded that the entire matter was examined afresh in the light of the advise tendered by the Commission. The allegation against the petitioner was for accepting insufficiently stamped registration deeds, which were as many 113 in number. Apart from this, the charge of irregularity in auction of "Sazi" contract was also proved against the petitioner . In such circumstances, the penalty of stoppage of 1/4th of his pension for a period of five years was imposed on the petitioner. From a bare reading of

order of penalty which has been passed while affirming and accepting the conclusion recorded by the inquiring authority, it cannot be said that it was a non-speaking and unreasoned order.

For what has been discussed above, I do not find any merit in this writ petition and the same is hereby dismissed with no order as to costs.

(MOHAMMAD RAFIQ), J.

c.p.goyal/-